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60-Day Notice of Intent to Sue
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Via US Mail, Certified

Randy Hooper
Border Coast Regional Airport Authority
1650 Dale Rupert Road, Suite 100
Crescent City, CA 95531

Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")

To Officers, Directors, Operators, Property Owners and/or Facility Managers of BCRAA:

This letter is being sent to you on behalf of Eden Environmental Citizen's Group, LLC ("EDEN") to give legal notice that EDEN intends to file a civil action against Border Coast Regional Airport Authority ("Discharger" or "BCRAA") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the BCRAA facility located at 150 Dale Rupert Road in Crescent City, California ("the Facility" or "the site").

EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

EDEN formally registered as a limited liability company (LLC) association with the California Secretary of State on June 22, 2018; however, since at least July 1, 2014, EDEN has existed as an unincorporated environmental citizen's association with members who remain associated with EDEN as of the date of this Notice.

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As discussed below, the Facility's discharges of pollutants degrade water quality and harm aquatic life in the Facility's Receiving Waters, which are waters of the United States and described in Section II.B, below. EDEN has members throughout northern California. Some of EDEN's members live, work, and/or recreate near the Receiving Waters and use and enjoy the Receiving Waters for surfing, kayaking, camping, fishing, boating, swimming, hiking, cycling, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study.

At least one of EDEN's current members has standing to bring suit against BCRAA, as the unlawful discharge of pollutants from the Facility as alleged herein has had an adverse effect particular to him or her and has resulted in actual harm to the specific EDEN member(s).

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of certain individual EDEN members have been, are being, and will continue to be adversely affected by the failure of BCRAA to comply with the General Permit and the Clean Water Act.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB")]) Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around January 13, 2017, BCRAA submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility under the 2015 Permit. BCRAA's assigned Waste Discharger Identification number ("WDID") is 1 081027007.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, BCRAA has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

II. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is BCRAA's permanent facility address of 150 Dale Rupert Road in Crescent City, California.

BCRAA Facility is an Airport Terminal Service, also engaged in aircraft maintenance, fueling of aircrafts, and providing rental car service.

Facility operations are covered under Standard Industrial Classification Code (SIC) 4581- Airports, Flying Fields, and Airport Terminal Services. Includes servicing, repairing, or maintaining aircraft and ground vehicles; Equipment cleaning and maintenance (including vehicle and equipment rehabilitation mechanical repairs, painting, fueling, lubrication); Deicing/anti-icing operations at airports.

Based on the EPA's Industrial Storm Water Fact Sheet for Sector S – Air Transportation Facilities, polluted discharges from operations at the Facility contain pH affecting substances; biochemical oxygen demand (BOD), nitrogen, ammonia, jet engine oil and fuel, hydraulic fluid, lavatory wastes, heavy metals, automobile oil, hydraulic fluid, fuel and radiator fluids; tire rubber; paint chips; chemical solvents, and oil and grease. Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Information available to EDEN indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

B. The Affected Receiving Waters

The Facility discharges into a municipal storm drain system, which then discharges to the Pacific Ocean ("Receiving Waters").

The Pacific Ocean is a water of the United States. The CWA requires that water bodies such as the Pacific Ocean meet water quality objectives that protect specific "beneficial uses."

The Regional Water Board has issued the *North Coast Region Basin Water Quality Control Plan* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include sport fishing, fish migration, navigation, preservation of rare and endangered species, water contact and noncontact recreation, fish spawning, and wildlife habitat. Contaminated storm water from the Facility adversely affects the water quality of the Smith River and Klamath River Watershed and threatens the beneficial uses and ecosystem of this watershed.

In 1996, the Klamath River mainstem was listed as impaired for organic enrichment/low dissolved oxygen (DO) from Iron Gate Reservoir to the Scott River, and for nutrient and temperature impairment in the remainder of the basin pursuant to section 303(d) of the Clean Water Act. In 1998, the Klamath River watershed was listed for nutrient and temperature impairment from Iron Gate Reservoir to the Scott River, and the Klamath River mainstem was listed for organic enrichment/low dissolved oxygen in the reaches upstream of Iron Gate Reservoir and downstream of the Scott River. Iron Gate and Copco Reservoirs and the intervening reach of the Klamath River were listed for the blue-green algae toxin microcystin impairment in 2006. The 303(d) listings were confirmed in the Klamath River TMDL analysis.

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Deficient/Invalid SWPPP and Site Map

BCRAA's current Storm Water Pollution Prevention Plan ("SWPPP") and Site Map for the Facility are both inadequate and fail to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

(a) The Site Map does not include the minimum required components for Site Maps as indicated in Section X.E of the General Permit. Specifically, the Site Map fails to include the following:

- 1) the facility boundary;
- 2) on-facility surface water bodies;
- 3) areas of soil erosion;
- 4) nearby water bodies such as rivers, lakes and creeks;
- 5) sample locations if different than the identified discharge locations;
- 6) locations and descriptions of structural control measures that affect industrial storm water discharges, authorized NSWDs and/or run-on;

- 7) identification of all impervious areas of the facility, including paved areas, buildings, covered storage areas or other roofed structures;
 - 8) locations where materials are directly exposed to precipitation and the locations where identified significant spills or leaks have occurred;
- (b) The SWPPP fails to discuss in specific detail Facility operations (Section X.D.2.d)
- (c) The SWPPP fails to include an adequate discussion of the Facility's receiving waters (Section XI.B.6(e), Section X.G.2.ix);
- (d) The SWPPP fails to discuss the Annual Comprehensive Facility Compliance Evaluation (Section X.A.9);
- (e) The SWPPP is invalid because it was not certified and submitted by the Facility's Legally Responsible Person. In fact, the SWPPP was not certified by anyone. Pursuant to Section XII.K of the General Permit, all Permit Registration Documents (PRDs), including SWPPPs, must be certified and submitted by the Facility's authorized Legally Responsible Person;

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

1. Failure to Conduct Visual Observations

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN believes that between January 13, 2017, and the present, BCRAA has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

2. Failure to Collect and Analyze the Required Number of Storm Water Samples

In addition, EDEN alleges that BCRAA has failed to provide the Regional Water Board with the minimum number of annual documented results of Facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, BCRAA has failed to upload into the SMARTS database system *any* storm water sample analyses for samples collected during the reporting years 2015-16, 2016-17, 2017-18 and 2018-19 to date.

C. Falsification of Annual Reports Submitted to the Regional Water Board

Section XXI.L of the General Permit provides as follows:

L. Certification

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

N. Penalties for Falsification of Reports

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On July 13, 2018, BCRAA submitted its Annual Report for the Fiscal Years 2017-18. Ms. Susan Daugherty signed the Report under penalty of law. Ms. Daugherty is the current Designated Authorized Representative ("DAR") for BCRAA.

Ms. Daugherty responded "Yes" to Question No. 3 on the Annual Report(s) ("Did you sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B?") However, as discussed above, BCRAA failed to collect and analyze the required number of storm water samples during the reporting year(s) in question.

D. Deficient BMP Implementation

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices ("BMPs") that comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that BCRAA has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

BCRAA's failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

E. Discharges in Violation of the General Permit

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

F. Failure to Comply with Facility SWPPP

Section 8.0 "Monitoring Implementation Plan" of the Facility SWPPP indicates that the Facility will collect and analyze storm water samples from two qualified storm events within the first half of each reporting year (July 1 to December 31) and two QSEs within the second half of each reporting year (January 1 to June 30).

As detailed above, the Facility missed collecting storm water samples in the reporting years 2016-17 and 2017-18, and 2018-19.

G. Failure to Properly Train Employees/Facility Pollution Prevention Team

Section X.D.1 of the General Permit requires each Facility to establish a Pollution Prevention Team who is then responsible for assisting with the implementation of the requirements of the General Permit. The Facility is also required to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned Pollution Prevention Team members are temporarily unavailable (due to vacation, illness, out of town business, or other absences).

Section X.H.f of the General Permit also requires that each Facility ensure that all of its Pollution Prevention Team members implementing the various compliance activities of the General Permit are properly trained in at least the following minimum requirements: BMP implementation, BMP effectiveness evaluations, visual observations, and monitoring activities. Further, if a Facility enters Level 1 status, appropriate team members must be trained by a QISP.

Based on the foregoing violations, it is clear that BCRAA has either not properly established its Pollution Prevention Team, or has not adequately trained its Pollution Prevention Team, in violation of Sections X.D.1 and X.H.f of the General Permit.

BCRAA may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are BCRAA, as well as employees of the Facility responsible for compliance with the CWA.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least January 13, 2017, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez
EDEN ENVIRONMENTAL CITIZEN'S GROUP
2151 Salvio Street #A2-319
Concord, CA 94520
Telephone: (925) 732-0960
Email: Edenenycitizens@gmail.com (emailed correspondence is preferred)
Website: edenenvironmental.org

EDEN has retained counsel in this matter as follows:

Paul J. Warner
Paul Warner Law
P.O. Box 4755
Arcata, CA 95518
Telephone: (707) 825-7725
Email: piwlaw@sbcbglobal.net

To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Paul Warner.

VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), EDEN will seek to recover its litigation costs, including attorneys' and experts' fees.

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages BCRAA's counsel to contact **EDEN's counsel** within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein. Please do not contact EDEN directly.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if BCRAA wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of

the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Aiden Sanchez', written over a horizontal line.

AIDEN SANCHEZ
Eden Environmental Citizen's Group

Copies to:

Administrator, U.S. Environmental Protection Agency
Executive Director, State Water Resources Control Board
Regional Administrator, U.S. EPA – Region 9